

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

29 January 1988

MEMORANDUM FOR: Liaison Officer
Office of Congressional Affairs, DCI

STAT FROM:

Chief, Procurement Management Staff, OL

SUBJECT: S. 909, Commercial Activities Contracting Act of 1987

1. With respect to S. 909 entitled "Commercial Activities Contracting Act of 1987," we provide the following two attachments:

STAT (a) A "Routing and Record Sheet" (Form 610), dated 11 January 1988, from Associate General Counsel, reflecting his views on S. 909. Procurement Management Staff (PMS), OL concurs with these views. (Attachment A)

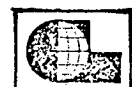
(b) An OL/PMS memorandum, dated 25 January 1988, which provides further analysis on the subject Act, S. 909. (Attachment B)

STAT 2. Per our understanding, all inquiries on procurement legislation are to be sent directly to the undersigned for action.

Attachments:

- A. Routing and Record Sheet
- B. Memorandum

OL 5013-88



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SUBJECT: S. 909, Commercial Activities Contracting Act of 1987

Distribution:

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STAT OL/PMS : rap (27JAN88)

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ATTACHMENT
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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Commercial Activities Contracting Act of 1987, S. 909

FROM:

Associate General Counsel

EXTENSION

NO.

DATE

11 JAN 1988

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. C/PMS/OL

11 JAN 1988

We have reviewed the attached bill and find it objectionable because of the increased burden it places on government agencies, particularly since it requires annual studies and the transfer of Agency money back to the Treasury. This objection, however, would be common to all federal agencies and not just the CIA. If you believe the Office of Logistics would have other objections to this bill, you may want to comment separately to OCA.

Attachment
As Stated

LEGI-SLATE Report for the 100th Congress

Fri, Dec 18, 1987 9:58am (EST)

Report for S.909 Commercial Activities Contracting Act of 1987
As introduced in the Senate
Complete Text of this version

100th CONGRESS
1st Session

II

S. 909

To require that all amounts saved as a result of Federal Government contracting pursuant to Office of Management and Budget Circular A-76 be returned to the Treasury, that manpower savings resulting from such contracting be made permanent, and that employees of an executive agency be consulted before contracting determinations by the head of that executive agency are made pursuant to that circular.

IN THE SENATE OF THE UNITED STATES

April 3 (legislative day, March 30), 1987

Mr. Reid (for himself, Mr. Sarbanes, and Mr. Pryor) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require that all amounts saved as a result of Federal Government contracting pursuant to Office of Management and Budget Circular A-76 be returned to the Treasury, that manpower savings resulting from such contracting be made permanent, and that employees of an executive agency be consulted before contracting determinations by the head of that executive agency are made pursuant to that circular.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Activities Contracting Act of 1987".

SEC. 2. ACCOUNTING FOR SAVINGS RESULTING FROM FEDERAL GOVERNMENT CONTRACTING UNDER OMB CIRCULAR A-76.

(a) Savings To Be Returned to the Treasury.--(1) Not more than 60 days after the beginning of each fiscal year, the head of each executive agency shall pay into the General Fund of the Treasury the amount determined under paragraph (2).

(2) At the beginning of each fiscal year, the head of each executive agency shall determine the total amount saved by that executive agency as a result of converting during the preceding fiscal year to contractor performance any commercial activity which, during the preceding fiscal year--

(A) was previously performed by civilian employees of that executive agency; or

(B) was previously performed for or on behalf of that executive agency by members of the uniformed services.

(b) Civilian Employee Savings.--(1) Whenever an executive agency converts to contractor performance any commercial activity, the total number of civilian employees authorized for that executive agency in the fiscal year in which the conversion takes place shall be reduced by the number of civilian employees of that executive agency required to perform that commercial activity on a full-time basis (including the full-time equivalent of the number of civilian employees of that executive agency required to perform such activity on less than a full-time basis).

(2) The Director of the Office of Management and Budget, after consulting with the head of the executive agency concerned, shall determine the amount of any reduction in the authorized number of civilian employees of that executive agency pursuant to paragraph (1).

(c) Uniformed Services End Strengths.--(1) Whenever an executive agency converts to contractor performance any commercial activity previously performed for or on behalf of that executive agency by members of a uniformed service, the end strength authorized for that uniformed service at the end of the fiscal year in which the conversion takes place shall be reduced by the number of members of that uniformed service required to perform that commercial activity on a full-time basis (including the full-time equivalent of the number of members of that uniformed service required to perform such activity on less than a full-time basis).

(2) The Secretary concerned shall determine the amount of any reduction in the authorized end strength of a uniformed service pursuant to paragraph (1).

SEC. 3. PARTICIPATION OF FEDERAL EMPLOYEES IN DETERMINATIONS UNDER OMB A-76.

(a) In General.--each officer or employee of an executive agency responsible for determining under Office of Management and Budget Circular A-76 whether to convert to contractor performance any commercial activity of that executive agency--

(1) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees of the executive agency who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(2) may consult with such employees on other matters relating to that determination.

(b) Consultation Procedures.--(1) In the case of employees of an executive agency represented by a labor organization accorded exclusive recognition under section 7111 of title 5, United States Code, consultation with representatives of that labor organization shall satisfy the consultation requirement in subsection (a).

(2) In the case of employees of an executive agency other than employees referred to in paragraph (1), consultation with appropriate representatives of

those employees shall satisfy the consultation requirement in subsection (a).

(c) Regulations.--The Administrator of the Office of Federal Procurement Policy shall issue regulations to carry out this section. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in subsection (b)(2) for purposes of consultation required by subsection (a).

SEC. 4. DEFINITIONS.

In this Act:

(1) The term "executive agency" has the same meaning as is provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) The term "Secretary concerned" has the same meaning as is provided in section 101 of title 37, United States Code.

(3) The term "uniformed service" means any of the uniformed services named in section 101 of title 37, United States Code.

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25 January 1988

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MEMORANDUM FOR:

Chief, Procurement Management Staff

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FROM:

Procurement Management Staff

SUBJECT:

S. 909, Commercial Activities Contracting Act of 1987, -
Review and Comment

1. If enacted into law, the Commercial Activities Contracting Act of 1987 (S. 909) would require that executive agencies return to the U.S. Treasury all amounts saved as a result of contracting out of "commercial activities," as now required by regulation under OMB Circular A-76. Along with the return of funds, that agency would also be required to reduce the number of government personnel it once took to perform that activity.

2. While the Agency has taken the position that it is not subject to OMB Circular A-76, it is arguable that the Agency is subject to the bill and thus may become subject to A-76. Section 4 of S. 909 defines executive agency to include "independent establishment," as defined in 5 USC 104. The Agency is considered an independent establishment under 5 USC 104. In the event that S. 909 becomes law, we would most likely rely on Sections 6 and 8 of the CIA Act of 1949 and claim that Congress never intended to make the Agency subject to the bill.

3. Procurement Management Staff, OL, believes that the Agency should oppose S.909 for both general governmental reasons and Agency specific reasons. From the general standpoint, our objection is based on the increased burden of annual studies and reporting. In addition, agencies will experience a permanent reduction in budget and personnel. Presently, such savings are used to provide training and job placement services, as well as increased productivity studies by the agency that incurs the saving. Returning all of these funds to the Treasury would leave displaced workers without these services.

3. From the Agency's specific standpoint, a statutory requirement to return A-76 savings to the Treasury might subject the Agency to court challenge that certain Agency functions could be performed by the private sector. Moreover, once such functions were performed by the private sector, there would be a permanent loss of the Agency personnel that once performed that function. Agency personnel ceilings and end strengths would also be permanently affected.

SUBJECT: S. 909, Commercial Activities Contracting Act of 1987 -
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4. Another problem comes from the ever expanding definition of "commercial activities." The experience of the Department of Defense bears repeating. Ever since OMB Circular A-76 was promulgated in 1966, the Department of Defense has been subject to it. During this time the definition of "commercial activities" has expanded to include many functions that could be considered governmental in nature. As applied to the Defense Department, commercial activities, with certain exceptions, that must be contracted out and not performed in-house include: 1) all health services, 2) financial and payroll services, 3) record keeping, 4) repair maintenance, modernization or overhaul of any equipment, including communications, aircraft, electronic and automobile, 5) research and development and 6) education and training. See 32 CFR 169 and 169a for a complete list.

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6. Deficit reduction is the underlying purpose of S.909. Accordingly, the bill has facial appeal and may gather momentum on that basis alone. Asking for an Agency exemption from a committee staff that has little or no appreciation of the intelligence process may not be worth the effort. It may be more prudent to seek the assistance of our oversight committees or to get behind DOD in opposing the bill.

STAT